

STEPHEN A. HILDEBRANDT
Chief Counsel



WESTINGHOUSE BROADCASTING COMPANY, INC.
1025 CONNECTICUT AVENUE, N.W., SUITE 506
WASHINGTON, D.C. 20036-5405
(202) 857-5155

July 28, 1995

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CS Docket No. 95-61
Annual Assessment of the Status in the Market for the
Delivery of Video Programming

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

On behalf of Group W Satellite Communications, a venture of Westinghouse Electric Corporation and its Westinghouse Broadcasting Company division, enclosed herewith for filing with the Commission are an original and four copies of *Reply Comments of Group W Satellite Communications.*, filed in response to the Commission's *Notice of Inquiry* in the above referenced proceeding, pursuant to the Commission's rules and policies.

Should there be any questions in connection with these comments, please contact the undersigned.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "S. A. Hildebrandt", followed by a stylized flourish or initials.

Stephen A. Hildebrandt
Chief Counsel

Encl.

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ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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COMMUNICATIONS

SECTION

In the Matter of:)
)
Annual Assessment of the Status in the) CS Docket No. 95-61
Market for the Delivery of Video)
Programming)

DOCKET FILE COPY ORIGINAL

**REPLY COMMENTS OF
GROUP W SATELLITE COMMUNICATIONS**

Group W Satellite Communications
250 Harbor Drive
Stamford, CT 06904-2210

Mark Melnick, Esq.
Stephen A. Hildebrandt, Esq.

For itself and on behalf of
Gaylord Entertainment Company

July 28, 1995

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)	
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**REPLY COMMENTS OF
GROUP W SATELLITE COMMUNICATIONS**

Group W Satellite Communications ("GWSC"), a venture of Westinghouse Electric Corporation ("Westinghouse") and its Westinghouse Broadcasting Company division, by its attorneys, hereby files Reply Comments in the above-referenced proceeding. As described in our June 30, 1995 Comments in this proceeding, GWSC currently distributes The Nashville Network ("TNN") and Country Music Television ("CMT"). TNN is wholly-owned by Gaylord Entertainment Company ("Gaylord") and CMT is owned by Gaylord and Westinghouse.¹

¹ TNN and CMT are currently vertically integrated satellite cable program services, but it is expected that they will become non-vertically integrated prior to the end of 1995. Gaylord expects to close the divestiture of its direct and indirect cable system holdings in late 1995. Westinghouse currently has no direct or indirect cable system holdings.

These Reply Comments address the filings made in response to the Commission's Notice of Inquiry dated May 4, 1995 (the "NOI"), relating to the Commission's Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming. In particular, this Reply addresses Comments filed in response to Paragraph 90(h) of the NOI, in which the FCC asks, "Should the program access rules [of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act")] be extended to non-vertically integrated program providers?" GWSC's own Comments argued that the answer to this question is "No." This Reply corrects misrepresentations in the Comments of National Cable Television Cooperative, Inc. ("NCTC") and demonstrates that neither those Comments nor any others filed in this proceeding negate the validity of the arguments in GWSC's own Comments.

1. NCTC'S COMMENTS ARE REplete WITH MISREPRESENTATIONS.

GWSC knows that the proper focus of this proceeding is public policy rather than the details of any particular commercial relationship. However, we feel compelled to correct the many misrepresentations about GWSC contained in the Comments of NCTC. NCTC's distortion of the record demonstrates only that when the truth of industry dealings is revealed, no basis exists for expanding the program access rules in the manner referred to in Paragraph 90(h) of the NOI.

It is true that, to date, GWSC and Gaylord have determined that the terms and conditions of TNN distribution offered by NCTC make selling TNN through NCTC not in their best interest. Likewise, GWSC and Gaylord have determined that neither is it in their best interest to renew NCTC's CMT distribution contract after that contract's forthcoming expiration. Both of these decisions -- like all GWSC and Gaylord distribution decisions -- were based on legitimate business factors, rationally and independently considered. The conclusion that selling, for example, TNN through NCTC was not in the best interest of the network was made years before the 1992 Cable Act was enacted and was confirmed upon reconsideration at NCTC's request after passage of that Act and its FCC regulations.

NCTC cites principles against supplier differentiation among buyers similarly situated. However, NCTC has *never* offered TNN or CMT distribution terms that would situate it similarly to other distributors to which GWSC sells. The ways in which NCTC's TNN and CMT distribution terms would be different from those of other distributors are myriad and material, and GWSC will not burden the Commission with their articulation in this forum. One example, however, illustrates the extremes to which NCTC has gone in an effort to alchemize GWSC's legitimate distribution decisions into "discrimination." NCTC labels itself a "buying group" (p.1). This it is not, since it offers programmers such as GWSC neither of the two crucial financial protections of direct liability or joint and several

member liability.² NCTC can only engage in verbal trickery, stating (p.6) that it “assumes responsibility for billing” (*but only as an administrator, not as an obligor!*) and that it “pays on behalf of” its members (*but only if those members pay NCTC!*). The 1992 Cable Act and the FCC’s definition of “buying groups” and other regulations all recognize the difference between enforcing license fee collections against one MSO and enforcing them against the *thousands* of cable systems NCTC represents. At bottom, what NCTC really wants is similar treatment for a distributor *dissimilarly* situated³

2. NO COMMENTS IN THIS PROCEEDING NEGATE THE ARGUMENTS IN GWSC’S OWN COMMENTS.

Nothing in any of the Comments filed in this proceeding -- including NCTC’s -- negates any of the arguments in GWSC’s own Comments.

A. There has been no showing that non-vertically integrated programmers limit program distribution. No Comment demonstrating that non-vertically integrated programmers are limiting program distribution was filed in this proceeding. Even NCTC could not claim that any program distribution

² See definition of “buying groups” at 76 C.F.R. §76.1000(c).

³ NCTC’s statements (p.2) that GWSC and Gaylord “initially sought to avoid” the obligations they inherited under the CMT distribution agreement of that service’s former owner, and that they complied with those obligations only at “NCTC’s vigorous insistence,” are simply ludicrous. GWSC and Gaylord have *never* sought to avoid any of their contractual obligations and have satisfied those obligations faithfully with respect to NCTC since the day they assumed the NCTC contract in 1991.

limitation has occurred; as it knows, GWSC is happy to sell TNN and CMT (directly) to all NCTC members that want it and that satisfy GWSC's basic distribution requirements.

B. There is no incentive for non-vertically integrated programmers to limit

distribution. Programmers such as TNN and CMT are in the business of generating license fees and advertiser revenues. Obviously, that means that they must not limit distribution. Non-vertically integrated programmers lack completely any conflicting incentive to limit access by non-cable distributors. No Comment arguing otherwise, or arguing that any other Congressional basis exists for the program access rules, was filed in this proceeding.

C. Legitimate business reasons for varying terms exist and are governed by

the marketplace. No one has suggested eliminating a programmer's right to differentiate, in price and other terms of carriage, among distributors not similarly situated. Even under NCTC's false suggestion that it is situated similarly to TNN's and CMT's other distributors, NCTC's claim that being so would militate in favor of expanding the program access rules is unfounded. In the entire period from the effective date of the 1992 Cable Act to the present, during which GWSC has lawfully chosen not to sign a TNN distribution agreement with NCTC, TNN has been vertically integrated.⁴ Expanding the reach of the program access rules to non-vertically integrated companies would

⁴ As described above, TNN and CMT expect to become non-vertically integrated later this year.

not help NCTC to secure the TNN and CMT distribution rights (without corresponding responsibilities) that NCTC desires. Neither would such expansion alter the general right of programmers to differentiate in conditions of sale as a result of legitimate business differences among buyers. No Comment contradicting this basic truth was filed in this proceeding.

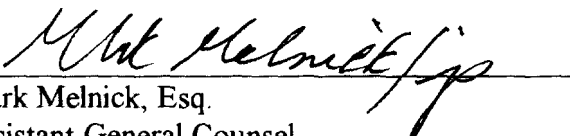
GWSC regrets having to bloat the record in this proceeding merely to refute the misrepresentations of NCTC. The more fundamental point is that no Comment in this proceeding -- neither NCTC's nor any one else's -- undermined the cogency of any of the arguments in GWSC's own Comments.

No showing has been made that non-vertically integrated programmers limit distribution, no argument has been made that non-vertically integrated programmers have any incentive to do so and no claim has been made that applying the program access rules to non-vertically integrated programmers would alter license fee and other carriage term

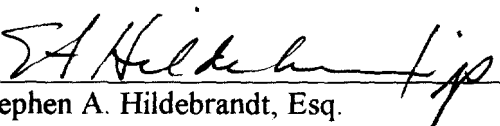
differentiation by them -- not exactly a situation crying out for supplanting the free marketplace with government regulation and new administrative burdens.

Respectfully submitted,

GROUP W SATELLITE COMMUNICATIONS,
for itself and on behalf of
Gaylord Entertainment Company

By: 
Mark Melnick, Esq.
Assistant General Counsel

Group W Satellite Communications
250 Harbor Drive
Stamford, CT 06904-2210


Stephen A. Hildebrandt, Esq.
Chief Counsel
Westinghouse Broadcasting Company
1025 Connecticut Ave. N.W., Suite 506
Washington, DC 20036-5405

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Its Attorneys